

#### § 405.1008

those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that the beneficiary would have been charged for the items or services in question if those expenses were not paid under § 411.400 of this chapter or if that liability was not limited under § 411.402 of this chapter, reduced by any deductible and coinsurance amounts applicable in the particular case.

(e) *Aggregating claims to meet the amount in controversy—*

(1) *Appealing QIC reconsiderations to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were previously reconsidered by a QIC;

(ii) The request for ALJ hearing lists all of the claims to be aggregated and is filed within 60 days after receipt of all of the reconsiderations being appealed; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(2) *Aggregating claims that are escalated from the QIC level to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were pending before the QIC in conjunction with the same request for reconsideration;

(ii) The appellant(s) requests aggregation of the claims to the ALJ level in the same request for escalation; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(f) *Content of request for aggregation.* When an appellant(s) seeks to aggregate

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claims in a request for an ALJ hearing, the appellant(s) must—

(1) Specify all of the claims the appellant(s) seeks to aggregate; and

(2) State why the appellant(s) believes that the claims involve common issues of law and fact or delivery of similar or related services.

#### § 405.1008 Parties to an ALJ hearing.

(a) *Who may request a hearing.* Any party to the QIC's reconsideration may request a hearing before an ALJ. However, only the appellant (that is, the party that filed and maintained the request for reconsideration by a QIC) may request that the appeal be escalated to the ALJ level if the QIC does not complete its action within the time frame described in § 405.970.

(b) *Who are parties to the ALJ hearing.* The party who filed the request for hearing and all other parties to the reconsideration are parties to the ALJ hearing. In addition, a representative of CMS or its contractor may be a party under the circumstances described in § 405.1012.

#### § 405.1010 When CMS or its contractors may participate in an ALJ hearing.

(a) An ALJ may request, but may not require, CMS and/or one or more of its contractors, to participate in any proceedings before the ALJ, including the oral hearing, if any. CMS and/or one or more of its contractors, including a QIC, may also elect to participate in the hearing process.

(b) If CMS or one or more of its contractors elects to participate, it advises the ALJ, the appellant, and all other parties identified in the notice of hearing of its intent to participate no later than 10 days after receiving the notice of hearing.

(c) Participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but it does not include calling witnesses or cross-examining the witnesses of a party to the hearing.

(d) When CMS or its contractor participates in an ALJ hearing, the agency or its contractor may not be called as a witness during the hearing.

(e) CMS or its contractor must submit any position papers within the time frame designated by the ALJ.

(f) The ALJ cannot draw any adverse inferences if CMS or a contractor decides not to participate in any proceedings before an ALJ, including the hearing.

**§ 405.1012 When CMS or its contractors may be a party to a hearing.**

(a) CMS and/or one or more of its contractors, including a QIC, may be a party to an ALJ hearing unless the request for hearing is filed by an unrepresented beneficiary.

(b) CMS and/or the contractor(s) advises the ALJ, appellant, and all other parties identified in the notice of hearing that it intends to participate as a party no later than 10 days after receiving the notice of hearing.

(c) When CMS or one or more of its contractors participate in a hearing as a party, it may file position papers, provide testimony to clarify factual or policy issues, call witnesses or cross-examine the witnesses of other parties. CMS or its contractor(s) will submit any position papers within the time frame specified by the ALJ. CMS or its contractor(s), when acting as parties, may also submit additional evidence to the ALJ within the time frame designated by the ALJ.

(d) The ALJ may not require CMS or a contractor to enter a case as a party or draw any adverse inferences if CMS or a contractor decides not to enter as a party.

**§ 405.1014 Request for an ALJ hearing.**

(a) *Content of the request.* The request for an ALJ hearing must be made in writing. The request must include all of the following—

(1) The name, address, and Medicare health insurance claim number of the beneficiary whose claim is being appealed.

(2) The name and address of the appellant, when the appellant is not the beneficiary.

(3) The name and address of the designated representatives if any.

(4) The document control number assigned to the appeal by the QIC, if any.

(5) The dates of service.

(6) The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed.

(7) A statement of any additional evidence to be submitted and the date it will be submitted.

(b) *When and where to file.* The request for an ALJ hearing after a QIC reconsideration must be filed—

(1) Within 60 days from the date the party receives notice of the QIC's reconsideration;

(2) With the entity specified in the QIC's reconsideration. The appellant must also send a copy of the request for hearing to the other parties. Failure to do so will toll the ALJ's 90-day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing. If the request for hearing is timely filed with an entity other than the entity specified in the QIC's reconsideration, the deadline specified in § 405.1016 for deciding the appeal begins on the date the entity specified in the QIC's reconsideration receives the request for hearing. If the request for hearing is filed with an entity, other than the entity specified in the QIC's reconsideration, the ALJ hearing office must notify the appellant of the date of receipt of the request and the commencement of the 90-day adjudication time frame.

(c) *Extension of time to request a hearing.* (1) If the request for hearing is not filed within 60 calendar days of receipt of the QIC's reconsideration, an appellant may request an extension for good cause (See §§ 405.942(b)(2) and 405.942(b)(3)).

(2) Any request for an extension of time must be in writing, give the reasons why the request for a hearing was not filed within the stated time period, and must be filed with the entity specified in the notice of reconsideration.

(3) If the ALJ finds there is good cause for missing the deadline, the time period for filing the hearing request will be extended. To determine whether good cause for late filing exists, the ALJ uses the standards set forth in § 405.942(b)(2) and § 405.942(b)(3).

(4) If a request for hearing is not timely filed, the adjudication period in § 405.1016 begins the date the ALJ